

Rosario Marinello
Proceeding in Forma Pauperis
266 Reservation Rd. # F-232
Marina, CA 93933

United States District Court
Northern District of California

Rosario Marinello

v.

Plaintiff

California Department of Corrections
And Rehabilitation

Defendant

100 SEP - 3 P 447
FILED
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J
Case # C-08-00664-JW
REPLY TO DEFENDANTS
MOTION TO DISMISS
AMENDED COMPLAINT

Case # C-08-00664 JW

Reply to (Docket Item #43) Defendants Second Motion to Dismiss Amended Complaint.
Hearing Date and Time: October 27th, 2008 at 9:00 am.

The following is in Reply to the Defendant, California Department of Corrections and Rehabilitation, Motion to dismiss my amended compliant filed July 8, 2004.

Statement of Undisputed Facts

Introduction

The following Statements of Facts support my claim of discrimination under Title VII of the Civil Rights act of 1964. The Department of Corrections and Rehabilitation has initiated actions that prevented my career advancement. These actions coincide within a specific time frame after I have engaged in protective activities.

1) Accepted Offer For Limited Term Position as a Correctional Counselor I

Exhibit 15: Chronological List of events Since March 2005. (Letter dated March 3rd 2005)

In March of 2005, I received a letter dated March 3rd confirming my acceptance of a 24 month limited term CCI Position at CTF- Soledad. During a Background Investigation commencing in April of 2005 I demonstrated that I exceeded minimum qualifications and that I am physically and mentally capable of performing the duties of the position.

2) Completed and Passed Qualification Exam

Exhibit 15: Chronological List of Events (Letter from SPB Dated March 23rd, 2006)

I completed and passed an exam in November of 2005, for the Position of Correctional Counselor I, with a respectable score and ranking. However in December of 2005 I received a letter from the Background Investigation Unit stating that I was no longer eligible for the position of Correctional Counselor I due to "Suitability."

3) Placed on "Active" Status after SPB Appeal, However Was Not Hired

Exhibit 15: Chronological List of Events (Letter from SPB Dated March 23rd, 2006)

After my Appeal of the Disqualification of my Background Investigation (SPB Case No. 04-2148), I was placed back on Eligible status and attended approximately fifteen Interviews. According to the feedback I received from panel members, I completed the interviews in a reasonably efficient manner. However was not hired for the position.

4) False Allegations

Exhibit 16: Letter from the Office of Internal Affairs dated 8/23/2006

Allegations in Investigation # CC N-II-SVSP-356-06-A are not correct. The Investigation was initiated after I resigned from my position as an M&SSI. I was an M&SSI for five years and resigned with a clear personnel file and no pending actions. The CCI List is an Open list, thus it is not required to be a Department of Corrections employee. A pending Investigation prevents Department of Correction Employees from being hired in promotional positions. The allegations occurred three months prior to my resignation and I did not have any knowledge of them before June 30th, 2006.

5) Removed From Hiring List after EEOC Complaint

Exhibit 1: Notice of List Eligibility Dated 02/20/07

Exhibit 2: Notice dated May 6th, 2007 from CTF Soledad

Exhibit 18: Copy of Complaint Case # 3: cv-0117BZ

As of February 20th, 2007 I was still listed as "Eligible" for Correctional Counselor I by the Department of Corrections & Rehabilitation Certification Unit. On February 23rd, 2007 I filed a complaint of Discrimination (Case # 3:-cv-0117BZ) for not being hired. On May 10th, 2007 I received a letter stating that I was no longer eligible and removed from the Open Promotional List for CCI.

6) Department Position Is Not Accurate

Exhibit 3: Withhold Response Form dated December 28th, 2006

Exhibit 4: Academic Evaluations

Exhibit 5: Academy Certificate

The Departments position is that I do not posses the desirable qualifications for the position of Correctional Counselor I, based on my "Suitability". I have proof that shows the contrary.

I have completed the entire curriculum for a Masters of Business Administration Degree from an accredited university and graduated with honors. My performance and work experience during my employment at the Correctional Training Facility in Soledad from 1986 until 1993 does not reflect the comments on my Background Information Transmittal: I did not have any negative Performance Evaluations or written Letters of Instruction. My performance was standard to excellent. I was a member of the Special Emergency Response Team for five years which requires a high degree of achievement, skills, conduct, and decision making. Including five years as an M&SSI, I have a total of twelve years experience with the California Department of Corrections and Rehabilitations.

7) Was Not Given Mandatory Performance Evaluations

Exhibit 6: Employment Inquiry for CTF Soledad dated 01/27/06

The Employment Inquiries for CCI state that I must submit a copy of my most recent Performance Evaluation with my application in order to interview.

I did not receive any employment for a three year period 2004, 2005, and 2006. In comparison with my co-workers during that period my performance was between standard and outstanding. Not having a recent Performance evaluation during this period gave me a disadvantage in the interview process.

8) Not Provided Representation for SPB Case #04-0650

Exhibit 8: SPB Case 04-0650

Exhibit 9: Stationary Engineers, Local 39 letter dated June 2, 2004

Exhibit 7: Confidential Information Transmittal

At the SPB hearing on June 8th, 2004, the local labor union did not provide me with proper representation according to the Bargaining Union Agreement on Report # 2003-ERO-019. This letter was in regards to case # 04-0650. It states that they withdrew from my representation in this matter. I received the letter on June 5th, 2004, thus did not allow me to properly prepare for the June 8th, 2004 hearing. Without representation the State Personnel Board agreed to have the Adverse Action removed from my personnel file.

9) State Personnel Board Appeal Was Not Processed

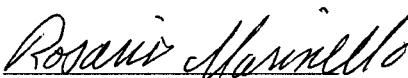
Exhibit 18: Letter from California State Personnel Board Dated February 15th, 2008

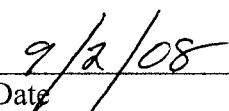
On November 27th, 2007 I filed an appeal, Case # 07-6039N, with the State Personnel Board in Sacramento. I received a letter dated February 15th, 2008, stating that my appeal is pending preliminary review. According to Government Codes there is a 6 month deadline for a decision on this type of an appeal. As of August 15th, 2008, I did not receive any type of response from the State Personnel Board. I have not received any response as of this date, September 2, 2008. The California State Personnel board has failed to respond within the six month deadline.

Summary

The Statement of Facts supports my claim of Discrimination Title VII of the Civil Rights Act of 1964. Evidence clearly indicates that every time that I proceeded with a Protective Activity for an Unfair Employment matter, the Department of Corrections and Rehabilitation initiated action that prevented my career advancement. I have also initiated an appeal with the California State Personnel Board to resolve this matter at a lower level, however they failed to respond. Thus, I respectfully recommend that this court continues with this hearing and my consider my proposed order.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in dismissal of my claims.


Rosario Marinello


Date

Case # C-08-0664-JW

Exhibit# 18

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2008 SEP -3 PM 4:47

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
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**CALIFORNIA STATE PERSONNEL BOARD**

801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

ARNOLD SCHWARZENEGGER, Governor

**February 15, 2008**

Rosario Marinello
 266 Reservation Rd., #F-232
 Marina, CA 93933

Personnel Officer:
 Corrections/Directorate
 1515 S Street - 522 North Attn: Personnel
 Sacramento, CA 95814

Appellant's Representative:

Class Title: Correctional Officer
Appeal Type: 

Dear Rosario Marinello:

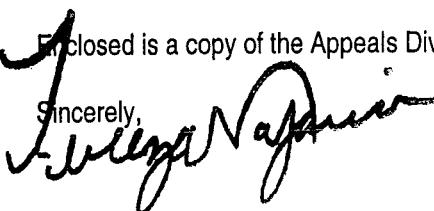
Case No. 07-6039N

Your letter has been received by the Appeals Division and is pending preliminary review to determine State Personnel Board jurisdiction for your concerns. The Appeals Division may accept, for non-evidentiary processing, appeals alleging violation of any law or rule governing the California State civil service merit system (e.g. examinations, withhold from certification, psychological screening and medical disqualification, reasonable accommodation, discrimination) as well as requests to file charges and whistleblower retaliation complaints.

For most appeals, Government Code provides that the period from the filing of an appeal to the decision of the board shall not exceed **six months**. Because of the high volume of appeals we receive it will be approximately **30 days** before your appeal will be assigned to staff for full consideration of your concerns. After that time, staff will be available to respond to specific questions about the status of your appeal.

If you have questions about your appeal, you may contact us at (916) 653-0799. If we need additional information from you, we will write to you at the above address. Please notify us in writing of any corrections or changes to your name or address. The Board will give careful consideration to any information that you provide us regarding your appeal.

You will receive a written decision from the Board stating the final outcome and the reasons for the decision. Please be assured that we take every measure to process all appeals in an expeditious, fair, and timely manner.


 Enclosed is a copy of the Appeals Division "General Information" brochure for your information.

Sincerely,

Tereza Majkovica
 Appeals Division

Enclosure (Appellant only)

R.M.
266 RESERVATION RD #100
MARINA CA 93933



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